

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Trespass Citation #33134 Issued to
Bradley Eugene Lastine.

NOTICE OF HEARING

PLEASE BE ADVISED that a hearing will be held on January 8, 2001, beginning at 3:30 P.M. by telephone conference call initiated by Administrative Law Judge Phyllis A. Reha. The hearing will be recorded by tape recorder.

The purpose of the hearing is to determine whether the citation issued to Bradley Eugene Lastine should be affirmed, dismissed or modified. The hearing is expected to last no more than one hour.

The citation that is being appealed was issued pursuant to Minn. Stat. § 97B.02. Subdivision 3 of that statute provides that if a person requests a hearing in order to appeal a citation, the hearing shall be held pursuant to procedures set forth in section 116.072, subd. 6. That statute provides an expedited administrative hearing process, and refers to Minnesota Rules, parts 1400.8510 to 1400.8612. These are the rules that will govern the conduct of this appeal. Copies of the above-referenced statutes and rules may be obtained from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155. Statutes and rules may also be found at county law libraries and many other public libraries in the State. The statutes may also be found using the Internet at www.revisor.leg.state.mn.us/stats/. The rules may be found at www.revisor.leg.state.mn.us/arule/.

It is not necessary that a person have an attorney in order to participate in this hearing. Usually in these hearings, both sides appear without an attorney. Any person may, however, choose to be represented by legal counsel or any other representative of their choice.

The only formal parties in this matter is Mower County (by the Mower County Sheriff's Office) and Mr. Lastine, the appellant. Any other person who desires to become a formal party to this case must submit a timely petition to intervene pursuant to Minn. Rules pt. 1400.8570. This petition must show how that person's legal rights, duties and privileges may be determined or affected by the decision in this case. The

petition must also set forth the grounds and purposes for which intervention is sought, and shall indicate petitioner's statutory right to intervene if one should exist. If the petition is granted, and the petitioner is given full party privileges, then the petitioner will have the right to present evidence and witnesses, and will also have the right to question witnesses presented by the other parties. Even without filing a petition to intervene, any person may offer testimony or other evidence that is relevant to the case, but they are subject to being questioned by the parties. The Deputy Sheriff has notified the ALJ that it plans to call the affected landowner as a witness, who will participate in the telephone hearing on January 8, 2001. Generally, non-parties are not allowed to question witnesses provided by the parties. If Mr. Lastine wishes to call any witnesses, he should notify the ALJ and provide a telephone number for that witness, or in the alternative, the witness can participate by being available at Mr. Lastine's telephone on January 8, 2001 at 3:30 P.M. If either party has any documents, records or other physical evidence they need to present their position; such evidence should be provided to the ALJ at least 7 days before the hearing. The ALJ will then provide copies of such documents to the opposing side in advance of the hearing. Subpoenas may be available to compel the attendance of witnesses or other production of documents. See Minnesota Rules pt. 1400.8601 for the procedures regarding subpoenas.

The Administrative Law Judge will issue Findings of Fact, Conclusions of Law, and a Recommended Disposition to the Mower County Board. The County Board will make the final decision. The Administrative Law Judge and the County Board can base their decision only on factual information or evidence that is part of the hearing record.

After the hearing is over, the Administrative Law Judge will issue a recommended decision. A copy will be sent to each party and to the Mower County Board. After allowing at least five days to pass, the Mower County Board will issue a final order. During the five-day period, the parties may file comments with the County Board regarding the recommended decision.

If Mower County fails to appear at the hearing, the citation will be dismissed and the fine will not need to be paid. If Mr. Lastine fails to appear at the hearing, the citation will be upheld and the fine will have to be paid within thirty (30) days of the issuance of the Mower County Board's decision, with no further opportunities for administrative appeal.

The appeal hearing will cost the taxpayers more than the amount of the fine imposed by the citation. Appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the law. The statute (§ 116.072, subd. 6(d)) provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to Pat Watts, Policy/Legal Analyst, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, telephone (651) 296-4883.

Dated this 18th day of December, 2000

PHYLLIS A. REHA
Administrative Law Judge